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No. 89-386

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

PORT AUTHORITY TRANS-HUDSON CORPORATION,
Petitioner,

— against —

PATRICK FEENEY,

Respondent.

PORT AUTHORITY TRANS-HUDSON CORPORATION,
Petitioner,

— against —

CHARLES T. FOSTER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**REPLY BRIEF ON BEHALF OF PETITIONER PORT
AUTHORITY TRANS-HUDSON CORPORATION**

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**REPLY BRIEF ON BEHALF OF PETITIONER PORT
AUTHORITY TRANS-HUDSON CORPORATION**

In this reply brief, petitioner Port Authority Trans-Hudson Corporation responds to the arguments set forth in the briefs submitted by respondents and opposing *amici*.

THE PORT AUTHORITY'S RELATIONSHIP TO THE COMPACTING STATES.

In *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391, 401 (1979), this Court stated that "[i]f an interstate compact discloses that the compacting States created an agency comparable to a county or municipality," there is no Eleventh Amendment immunity. But if, on the other hand, "[t]he intentions of [the compacting States], the terms of the Compact and the actual operation" of the entity disclose that the States had created an agency clothed with their powers and protections, the result is otherwise. *Id.* at 402.

In light of the close affinity between the Port Authority and its compacting States described in our principal brief which demonstrates that the Port Authority is entitled to share the States' Eleventh Amendment immunity,¹ what do respondents and opposing *amici* have to say in answer? In essence, they make seven separate contentions, none of which has merit:

1. Respondents point to the sole *Lake Country Estate* factor which it is arguable that the Port Authority does

¹ We there showed that this agency was established as an arm of State government and is politically and legally accountable as such to the Legislatures and Governors of both States. It can in no way be equated with a county, municipality or any other similar unit of local government whose governing officials are accountable to their particular local electorates. Hence, it is not surprising, that prior to the passage of its 1950-51 suability statute, every state and federal court that considered the matter held, without exception, that the Port Authority shared the common law sovereign immunity from suit of its compacting States. It would, therefore, appear rather startling to hold that it did not also share the States' Eleventh Amendment immunity from suit in federal courts.

not meet — that a money judgment against it is payable out of its funds and not out of general State tax revenues. While this is technically true, our principal brief pointed out that the "State treasury" factor was never meant by itself to be determinative, and carries even less weight when, as here, all the other indicia of State agency status set forth in *Lake Country Estates* point in but one direction — that the States plainly intended their Port Authority to function as their direct agent in the matters assigned to it. Furthermore, an over technical interpretation of this factor results in an artificial way of viewing the Port Authority's close financial relationship with its compacting States. Indeed, the New Jersey Supreme Court looking at this relationship in realistic pragmatic terms indicated that there can be multiple "State treasuries" when it said:

"... the general taxpayer too has an interest in such agencies [as the Port Authority]. First, he might be asked to provide the facilities if the State could not supply them through the agency. In fact the Holland Tunnel [which the Port Authority has operated since 1930] was built with the funds of the States. Next, these agencies may also furnish facilities that are not self-supporting and hence would burden the general taxpayer if furnished directly by the State. This, we gather, is true of the Port Authority. Further, it may be doubted as a practical matter that government would walk away from an agency which founders; financial failure would prejudice the acceptance of the bonds of other agencies of the same sovereign. And finally, the net assets of these agencies belong to the States that created them, and the taxpayers and citizens will profit from the use to which they are put after the bonds are liquidated." *Port of N.Y. Authority v.*

Hackensack Water Co., 41 N.J. 90, 106, 107; 195 A.2d 1, 17, 18 (1963).²

Thus, we submit that in a practical down-to-earth sense a judgment against the Port Authority ultimately has the same effect as one against the compacting States themselves and, therefore, the Port Authority meets this *Lake Country Estates* criterion as well. In this connection, we note that respondents stress the fact (Br.7) that the Port Authority, pursuant to statute, places its surplus revenues in a general reserve fund which it pledges as security for its obligations. They fail to mention, however, the further provision in the Authority's General Reserve Fund Act that:

"Any surplus revenues not required for the establishment and maintenance of the aforesaid general reserve fund shall be used for such purposes as may hereafter be directed by the two said states." N.Y. Unconsol. L. §7002 (McKinney 1979); N.J.S.A. 32:1-142 (West 1963).

2. Respondents argue that the Port Authority should not share the States' Eleventh Amendment immunity citing as support for their position (Br. 8) the provision in the

² Although the Port Authority has liquidated many of its prior series of bonds, at the present time it has over \$3.5 billion in outstanding obligations. This is because, over the years, existing Authority facilities had to be modernized and expanded, and the States have periodically assigned new powers and duties to this agency. As our principal brief pointed out (Br. 25-26), the Authority continues to provide the States with important new facilities, including non-revenue producing projects relating to economic development and infrastructure renewal and, of course, this agency continues to operate, on behalf of the States, deficit facilities such as PATH.

Authority's Hudson Tubes-World Trade Center legislation which provides that all details of operating these facilities shall be within the Authority's sole discretion and its decision concerning such matters shall be controlling and conclusive; and further that no agency, commission or municipality of either State shall have jurisdiction over such facilities. N.Y. Unconsol. L. §6612; N.J.S.A. 32:1-35.61. Similar provisions can be found in other Port Authority legislation as well.³

We submit that these provisions, far from supporting the proposition that the Port Authority should not be accorded the States' Eleventh Amendment immunity, prove just the opposite. They — together with the statute's declaration that the effectuation of these projects by the Port Authority will be for the benefit of the people of the two States and that the Authority, in carrying out its responsibilities concerning these projects, shall be regarded as performing an essential governmental function* — reflect the clear bi-State legislative policy that, in developing and operating its facilities, the Port Authority stands in the shoes of the compacting States themselves. In fact, it is

³ See, e.g., Bridge and Tunnel Unification Act, N.Y. Unconsol. L. §§6502, 6512; N.J.S.A. 32:1-119, 32:1-128; Air Terminal Act, N.Y. Unconsol. L. §§6631, 6634; N.J.S.A. 32:1-35.1, 32:1-35.4; Bus Project Act, N.Y. Unconsol. L. §7201; N.J.S.A. 32:2-23.27; Industrial Development Project Act, N.Y. Unconsol. L. §7180; N.J.S.A. 32:1-35.59.

* The Port Authority's Hudson Tubes — World Trade Center legislation provides that the effectuation of these projects:

"... are and will be in all respects for the benefit of the people of the states of New York and New Jersey, for the
(Footnote continued)

precisely because the Port Authority functions as the proxy or *alter ego* of the States that the Legislatures provided that no other agency of either State can review its determinations — determinations which, we emphasize, are always subject to gubernatorial veto.⁵

3. Respondents, citing *People v. Port of New York Authority*, 64 Misc.2d 563; 315 N.Y.S.2d 9 (Sup.Ct. N.Y.Co. 1970), mistakenly assert (Br. 9) that inasmuch as the New York Attorney General has sought injunctive relief against this agency, "even the State of New York . . . considers the Port Authority an independent entity or municipal corporation." The point that respondents miss is that when the States enacted the Authority's suitability statute, their "declared policy" was "not to waive the Port Authority's immunity from injunctive suit by private individuals." *Lewis v. Lefkowitz*, 32 Misc.2d 434, 436, 437; 223 N.Y.S.2d 221, 223 (Sup.Ct. N.Y.Co. 1961), *aff'd* 17 A.D. 2d 778 (1st Dept. 1962). Rather, under the statute, "[t]his right is given only to the Attorney General who may, in his discretion, bring such suit on behalf of any individual." 32 Misc.2d at 436, 323 N.Y.S.2d at 222.

increase of their commerce and prosperity and for the improvement of their health and living conditions; and the port authority and any subsidiary corporation incorporated for any of the purposes of this act shall be regarded as performing an essential governmental function in undertaking the effectuation thereof, and in carrying out the provisions of law relating thereto." N.Y. Unconsol. L. §6610; N.J.S.A. 32:1-35.59

⁵ The only exception is with respect to the power of the New Jersey Governor to veto the minutes relating to fixing of tolls for Port Authority bridges. N.J.S.A. 32:2-9

In commenting on this statutory provision, the New Jersey Supreme Court has said:

"Presumably, in enacting these identical statutes, both legislatures feared the immobilization of important public projects of the Port Authority and the attendant diversion of resources which might result from suits for injunctive relief. They sought to ensure, through these statutes, that only those suits first screened by a responsible public official might be brought." *Evans-Aristocrat Industries, Inc. v. Newark and The Port Authority of New York & New Jersey*, 75 N.J. 84, 90; 380 A.2d 268, 274 (1977).

Other cases which have commented on the Attorney General's statutory authorization to seek injunctive relief include *Wolkstein v. Port of New York Authority*, 178 F.Supp. 209, 213 (D.N.J. 1959) and *New York City Chapter of National Electrical Contractors Ass'n v. Fabber, et al.*, 73 Misc.2d 859, 861; 343 N.Y.S.2d 33, 35 (Sup.Ct. N.Y.Co. 1973) where the court said:

"It may be noted that pursuant to the compact and subsequent legislation, the Port Authority *on behalf of the 2 member states* owns or operates some 24 public terminal, transportation and other facilities within the port district, including 6 marine terminals." (Emphasis added).

Consequently, a litigant's inability to obtain injunctive relief against the Port Authority without the Attorney General's presence, is proof, not lack of proof, that this agency partakes of the States' sovereign immunity from suit.

4. It is hard to take seriously respondents' assertion that (Br. 6) "[n]either the State of New York nor New Jersey issue [sic] any laws, rules or regulations regarding the operation of the Port Authority or any of its facilities." The fact is that over the years both States have each enacted 47 separate concurrent statutes specifically dealing with the Port Authority and, in addition, each State has passed various non-concurrently enacted statutes and resolutions relating to this agency. (See Appendix A for a chronological list of these statutes and resolutions.)^{*} New Jersey has passed 17 non-concurrent statutes and 12 resolutions, while New York has adopted 34 non-concurrent statutes and 3 resolutions as well as a constitutional amendment enabling the Port Authority to provide New York residents with commuter railroad cars, N.Y. Const. Art. X, § 7. And insofar

^{*} We note that if the Port Authority were to be classified as a municipality, and not as a direct State agency, all of these statutes would apparently violate the New York Constitution since none were adopted in accordance with its home rule provisions. As the New York Court of Appeals stated:

"It is apparent that in drafting this legislation the Port Authority was always regarded as involved in matters of State concern, and consequently not subject to the Home Rule amendment. If it were to be brought within that amendment, the Port Authority Acts would have been invalid from the beginning inasmuch as they never complied with the constitutional requirements prescribed in the case of the enactment of statutes dealing with the 'property, affairs or government' of cities." *Whalen v. Wagner*, 4 N.Y. 2d 575, 581 (1958).

In upholding the challenged legislation, the court relied upon many previous Port Authority decisions, pointing out:

"The Port Authority is and of necessity has to be a State agency, in view of its dual State character and functions." *Id.* at 584.

as the operation of Port Authority facilities is concerned, the two Legislatures have specifically enacted, in *haec verba*, the rules and regulations which the Port Authority's Board of Commissioners had previously adopted governing the movement of traffic on its vehicular crossings, N.Y. Unconsol. L. §6801; N.J.S.A. 32:1-154.1 (Appendix B-1 to B-7), and on its air and marine terminal highways, N.Y. Unconsol. L. §6831; N.J.S.A. 32:1-154.18 (Appendix B-7 to B-13). In addition, the two Legislatures have enacted, also in *haec verba*, the Authority's rules and regulations governing smoking at its air and marine terminals, N.Y. Unconsol. L. §§6851, 6852; N.J.S.A. 32:1-146.4, 32:1-146.5 (Appendix B-13 to B-14), and governing the operation of PATH, N.Y. Unconsol. L. §§6861, 6862; N.J.S.A. 32:1-146.8; 32:1-146.9 (Appendix B-14 to B-17).

5. *Amici Pan American, et al.*, try to equate the Port Authority with a municipal corporation, a corporation which possesses no Eleventh Amendment immunity, by referring (Br. 7) to one of the statutory designations for this agency, that of a "municipal corporate instrumentality." Our principal brief conclusively refutes this contention by quoting (Br. 15-16) from the U.S. District Court's answer to an identical argument that was made in *Howell v. Port Authority*, 34 F.Supp. 197 (D.N.J. 1940). In this context, it is instructive to note that when this Court ruled in *Lincoln County v. Luning*, 133 U.S. 529, 530 (1890), that neither counties, nor municipalities, possess Eleventh Amendment immunity, it pointed out that such political subdivisions are a "part of the State only in [a] remote sense" (Emphasis added)

But, the Port Authority, we have shown, is not a part of its compacting States in any "remote sense." Rather, it

is inextricably intertwined with the Executive and Legislative Departments of the two States. Its Commissioners are both politically and legally accountable to their Governors, who possess a veto power over all their actions,⁷ and the Authority, as a creature of the State Legislatures, is subject, in all respects, to legislative control and direction. Indeed, every action the Port Authority takes implicates the compacting States *qua* States. This is certainly not true of counties and municipalities whose governing boards, as previously noted, are directly accountable to their local electorates, not to State officials.

6. *Amici* Pan American, *et al.*, chide the Port Authority for having participated in federal court litigation for over four decades without having raised the Eleventh Amendment as a defense. What *amici* ignore is the evolution of Eleventh Amendment doctrine during this period. Certainly, in the era of *Parden v. Terminal Railway of Alabama State Docks Dept.*, 377 U.S. 184 (1964), it would have hardly appeared responsible for an entity like the Port Authority which, by definition, is concerned almost wholly with matters of interstate and foreign commerce, many of which are regulated by Congress, to have raised the Eleventh Amendment as a defense. Indeed, it was not until *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468 (1987), that the *Parden* era had definitely ended. In any event, a basic jurisdictional defect like the absence of Eleventh Amendment jurisdiction can never be waived by defending suits on their merits. As this Court stated in *Ford Motor Co. v. Dept. of Treasury of the State of Indiana*, 323 U.S. 459, 467 (1945):

⁷ See footnote 5.

"The objection to petitioner's suit as a violation of the Eleventh Amendment was first made and argued by Indiana in this Court. This was in time, however."

7. *Amici* Pan American, *et al.*, also allege that the Port Authority's (Br. 8) "newly adopted strategy of asserting Eleventh Amendment immunity appears to be exercised most selectively." They assert that after vigorously arguing to the Second Circuit in this case that it possessed Eleventh Amendment immunity, the Port Authority urged the same court in *Automobile Club of New York v. Port Authority*, 887 F.2d 417 (2d Cir. 1989), to affirm a decision favorable to it on the merits, apparently without raising any claim of immunity. *Amici* are wrong. In footnote 2 of *Automobile Club*, the Second Circuit said:

"We should note also that the Port Authority's affirmative defense based upon the Eleventh Amendment, *see id.* at 271-72, is now foreclosed by our decision in *Feeney v. Port Auth. Trans-Hudson Corp.*, 873 F.2d 628 (2d Cir. 1989)." 887 F.2d 417, 420.

In sum, none of respondents' or opposing *amicis'* arguments casts a shred of doubt on the well established status of the Port Authority as a State, albeit bi-State, agency. In *Lake Country Estates*, this Court indicated that in view of the Eleventh Amendment's deference to State sovereignty, the determinative issue in deciding the status of a compact agency should be the intention of the compacting States and Congress' consent to that intention. Here, we respectfully submit, that by virtue of the 1921 Congressionally consented-to Port Compact establishing this agency, the many subsequently enacted statutes,

amending and supplementing the Compact, and the numerous court decisions interpreting the Compact and the subsequently enacted legislation—all of which demonstrate a close and intimate relationship between the Port Authority and its parent States, there can be no question but that this agency should share the Eleventh Amendment immunity of its creators. Such a holding, we believe, will fortify “[t]he principles of federalism that inform Eleventh Amendment doctrine,”⁹ by encouraging the States to solve cooperatively their particular regional problems by creating compact agencies clothed with their protections and privileges through utilization of the Constitution’s Compact Clause, just as New York and New Jersey have been successfully solving their regional problems for almost 70 years through their Port Authority.

⁹*Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984), citing *Hutto v. Finney*, 437 U.S. 678 (1978).

II.

THE ISSUE OF WAIVER

Finally, little more need be said concerning the claimed waiver of Eleventh Amendment immunity based on the venue provision in the Port Authority’s suability statute.⁹ Obviously it is not an unambiguous waiver of immunity. If it were, the Second and Third Circuits would not have reached opposite conclusions as to its meaning and the many pages devoted to it in the briefs of the parties and the *amici* would have been unnecessary. Hence, under these circumstances, the question is where does the presumption lie. If the rule laid down by this Court is that uncertainty should be resolved in favor of waiver, federal court jurisdiction over this controversy might exist. But if this Court’s rule is the opposite, as it unquestionably is, then the debate ends and Eleventh Amendment immunity bars this suit.

⁹ The consent-to-suit provision of the statute—the provision that confers judicial jurisdiction over actions brought against the Port Authority—is found in Section 1 of the act. N.Y. Unconsol. L. §7101; N.J.S.A. 32:1-157 (Pet. at A-54). And this section cannot, under the settled law of this Court, be interpreted to constitute a waiver of Eleventh Amendment immunity. Respondents and opposing *amici* claim, however, that such consent can be found in the venue provision of section 6 of the statute. N.Y. Unconsol. L. §7106; N.J.S.A. 32:1-162 (Pet. at A-54-55). But, as this Court has ruled: “[v]enue provisions come into play only *after* jurisdiction has been established and concern ‘the place where judicial authority may be exercised’”. *Lindahl v. Office of Personnel Management*, 470 U.S. 768, 793 n.30 (1985) (emphasis added), quoting *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939).

CONCLUSION

The Orders of the Court of Appeals should be reversed and the Complaints Dismissed for Lack of Subject Matter Jurisdiction.

Dated: New York, New York
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APPENDIX

PORT COMPACT OF 1921 AND
LEGISLATION CONSTITUTING
AGREEMENTS BETWEEN THE STATES
AMENDATORY AND SUPPLEMENTAL
TO THE PORT COMPACT OF 1921

APPENDIX A

Compact Authorization Act (New York)	C. 154, Laws of N. Y. 1921 (April 2, 1921)	N.Y. Unconsol. Laws or N.J.S.A.* 6401-6423
Compact Authorization Act (New Jersey)	C. 151, Laws of N.J. 1921 (April 30, 1921)	32:1-1 to 24
Comprehensive Plan Act (New Jersey)	C. 9, Laws of N. J. 1922 (Feb. 23, 1922)	32:1-25 to 35
Comprehensive Plan Act (New York)	C. 43, Laws of N. Y. 1922 (Feb. 24, 1922), as amended by C. 623, Laws of N. Y. 1924 (May 5, 1924)	6451-6468 6462-6468

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*Unless indicated otherwise, citations in this column are to the unofficial New York and New Jersey codifications of these provisions. The provisions for which no codification is supplied are not now codified.

Outerbridge Crossing: Construction (New Jersey)	C. 125, Laws of N. J. 1924 (March 11, 1924), as partially repealed by C. 192, Laws of N. J. 1925 (March 18, 1925)	32:1-36 to 46
Outerbridge Crossing: Construction (New York)	C. 230, Laws of N. Y. 1924 (April 23, 1924)	—
Goethals Bridge: Construction (New Jersey)	C. 149, Laws of N. J. 1924 (March 11, 1924) as partially repealed by C. 194, Laws of N.J. 1925 (March 18, 1925)	32:1-48 to 58
Goethals Bridge: Construction (New York)	C. 186, Laws of N. Y. 1924 (April 18, 1924)	—
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Goethals Bridge: Condemnation (New Jersey)	C. 195, Laws of N. J. 1925 (March 18, 1925)	32:1-59
Arthur Kill Bridges: Financing (New Jersey)	C. 37, Laws of N. J. 1925 (March 6, 1925)	32:1-60 to 70
Arthur Kill Bridges: Financing (New York)	C. 210, Laws of N. Y. 1925 (April 1, 1925)	—
George Washington Bridge: Construction (New Jersey)	C. 41, Laws of N. J. 1925 (March 9, 1925)	32:1-71 to 83.1
George Washington Bridge: Construction (New York)	C. 211, Laws of N. Y. 1925 (April 1, 1925)	—
Bayonne Bridge: Construction (New Jersey)	C. 97, Laws of N. J. 1925 (March 13, 1925)	32:1-94 to 106
Bayonne Bridge: Construction (New York)	C. 279, Laws of N. Y. 1926 (April 7, 1926)	—

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George Washington Bridge: Financing (New Jersey)	C. 6, Laws of N. J. 1926 (March 10, 1926)	
George Washington Bridge: Financing (New York)	C. 761, Laws of N. Y. 1926 (May 4, 1926)	—
Bayonne Bridge: Financing (New Jersey)	C. 3, Laws of N. J. 1927 (Feb. 15, 1927)	32:1-107 to 117
Bayonne Bridge: Financing (New York)	C. 300, Laws of N. Y. 1927 (March 24, 1927) as amended by C. 364, Laws of N. Y. 1928 (March 15, 1928) and C. 119, Laws of N.Y. 1929 (March 16, 1929)	—

Account Examination (New York)	C. 648, Laws of N. Y. 1929 (April 15, 1929)*	
Holland Tunnel: Transfer to Port Authority as Agent (New York)	C. 421, Laws of N. Y. 1930 (April 12, 1930)	—
Holland Tunnel: Transfer to Port Authority as Agent (New Jersey)	C. 247, Laws of N. J. 1930 (April 21, 1930)	32:1-119, 122-125
Lincoln Tunnel Study (New York)	C. 420, Laws of N. Y. 1930 (April 12, 1930)	
Lincoln Tunnel Study (New Jersey)	C. 248, Laws of N. J. 1930 (April 21, 1930)	32:1-119.2
Bridge and Tunnel Unification (New Jersey)	C. 4, Laws of N. J. 1931 (March 2, 1931)	32:1-121

* The comparable New Jersey statute was enacted in C. 90, Laws of N. J. 1950 (May 1, 1950).

Bridge and Tunnel Unification (New York)	C. 47, Laws of N. Y. 1931 (March 4, 1931)	6501-6525
General Reserve Fund (New Jersey)	C. 5, Laws of N. J. 1931 (March 2, 1931)	—
General Reserve Fund (New York)	C. 48, Laws of N. Y. 1931 (March 4, 1931)	—
Payments in Lieu of Taxes on Terminal Properties (New Jersey)	C. 69, Laws of N. J. 1931 (April 7, 1931)	32:1-144 to 146
Payments in Lieu of Taxes on Terminal Properties (New York)	C. 553, Laws of N. Y. 1931 (April 21, 1931)	6971-6973
Rules and Regulations for Vehicular Crossings (New Jersey)	C. 146, Laws of N. J. 1932 (May 2, 1932)	

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Holland Tunnel: Transfer of Property in Jersey City (New York)	C. 700, Laws of N. Y. 1933 (May 3, 1933)	—
Rules and Regulations for Vehicular Crossings (New York)	C. 251, Laws of N. Y. 1934 (April 23, 1934)	
George Washington Bridge: Adjustment of State Advances (New York)	C. 293, Laws of N. Y. 1935 (April 4, 1935)	—
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Traffic Regulations for Interstate Vehicular Crossings

Interstate vehicular crossings; establishment of rules and regulations

N.Y. Unconsol. L. § 6801; N.J.S.A. 32:1-154.1

To the end that the interstate vehicular crossings operated by the port of New York authority (hereinafter called the "Port Authority"), pursuant to the compact of April thirtieth, nineteen hundred twenty-one between the states of New York and New Jersey creating the port authority, may be efficiently and safely operated in the interest of the people of the states of New York and New Jersey and of the nation, the following rules and regulations governing traffic on vehicular crossings operated by the port authority, set forth in sections two through eight, inclusive, hereof, are hereby adopted by the legislatures of the two states, and are declared to be binding upon all persons and corporations affected thereby.

Payment of tolls and charges

N.Y. Unconsol. L. § 6802; N.J.S.A. 32:1-154.2

No traffic shall be permitted in or upon vehicular crossings except upon the payment of such tolls and other charges as may from time to time be prescribed by the port authority. It is hereby declared to be unlawful for any person to refuse to pay, or to evade or to attempt to evade the payment of such tolls or other charges.

Manner of operation of vehicles; construction, equipment and loading of vehicles

N.Y. Unconsol. L. § 6803; N.J.S.A. 32:1-154.3

No vehicle shall be operated carelessly or negligently, or in disregard of the rights or safety of others, or without due caution and circumspection, or at a speed or in a manner

so as to endanger unreasonably or to be likely to endanger unreasonably persons or property, or while the operator thereof is under the influence of intoxicating liquors or any narcotic or habit-forming drug, nor shall any vehicle be so constructed, equipped or loaded as to endanger unreasonably or to be likely to endanger unreasonably persons or property.

Compliance with orders and traffic lights, signs and signals
N.Y. Unconsol. L. § 6804; N.J.S.A. 32:1-154.4

All persons in or upon vehicular crossings must at all times comply with any lawful order, signal or direction by voice or hand of any member of the port authority police force. When traffic is controlled by traffic lights, signs or by mechanical or electrical signals, such lights, signs and signals shall be obeyed unless a port authority police officer directs otherwise.

Keeping to the right and within traffic lanes
N.Y. Unconsol. L. § 6805; N.J.S.A. 32:1-154.5

Unless otherwise directed, vehicles shall at all times stay to the right of the center of all roadways except in the case of one-way roadways; slow-moving vehicles shall remain as close as possible to the right-hand edge or curb of the roadway; and where a roadway is marked with traffic lanes vehicles shall not cross markings.

Operators' licenses; registration of vehicles
N.Y. Unconsol. L. § 6806; N.J.S.A. 32:1-154.6

No person shall operate a motor vehicle in or upon any part of a vehicular crossing unless he is duly authorized to operate motor vehicles in the state in which such part of the vehicular crossing is located. No motor vehicle shall be permitted in or upon any part of a vehicular crossing

which is not registered in accordance with the provisions of the law of the state in which such part of the vehicular crossing is located.

Accidents; stopping at scene of; assistance and information to be rendered; report
N.Y. Unconsol. L. § 6807; N.J.S.A. 32:1-154.7

The operator of any vehicle involved in an accident resulting in injury or death to any person or damage to any property shall immediately stop such vehicle at the scene of the accident, render such assistance as may be needed, and give his name, address, and operator's license and registration number to the person injured or to any officer or witness of the injury. The operator of such vehicle shall make a report of such accident in accordance with the law of the state in which such accident occurred.

Transportation of explosive or combustible materials, or poisonous substances, liquids or gases
N.Y. Unconsol. L. § 6808; N.J.S.A. 32:1-154.8

No person shall transport in or upon a vehicular crossing, any dynamite, nitroglycerin, black powder, fireworks, blasting caps or other explosives, gasoline, alcohol, ether, liquid shellac, kerosene, turpentine, formaldehyde or other inflammable or combustible liquids, ammonium nitrate, sodium chlorate, wet hemp, powdered metallic magnesium, nitro-cellulose film, peroxides or other readily inflammable solids or oxidizing materials, hydrochloric acid, sulfuric acid or other corrosive liquids, prussic acid, phosgene, arsenic, carbolic acid, potassium cyanide, tear gas, lewisite or any other poisonous substances, liquids or gases, or any compressed gas, or any radio-active article, substance or materials, at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

Violations; punishment; exclusion of vehicles involved from crossings

N.Y. Unconsol. L. § 6809; N.J.S.A. 32:1-154.9

Violations of the rules and regulations set forth in sections two through eight, inclusive, hereof, committed within the territorial limits of either state shall be punishable as may be provided by the laws of such state but the penalties prescribed by either state shall not preclude the port authority from excluding from vehicular crossings permanently or for a specified time, all vehicles violating any of the said rules and regulations, as well as other vehicles owned or operated by the owner or operator of such vehicle.

Definitions

N.Y. Unconsol. L. § 6810; N.J.S.A. 32:1-154.10

The following terms as used herein shall have the indicated meanings:

"Traffic" shall include pedestrians, ridden animals, herded animals and vehicles whether moved by human power or otherwise.

"Vehicular crossings" shall include not only bridges and tunnels operated by the port authority, but also their plazas and approaches, but shall not include any lands granted by the port authority to the states of New York or New Jersey or to a municipality for street or highway purposes even though such street or highway constitutes a means of access to or egress from such vehicular crossing.

Separability

N.Y. Unconsol. L. § 6811; N.J.S.A. 32:1-154.11

If any term or provision of this act shall be declared unconstitutional or ineffective in whole or in part by a court

of competent jurisdiction, then to the extent that it is not unconstitutional or ineffective, such term or provisions shall be enforced and effectuated, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

Repeal of prior laws

N.Y. Unconsol. L. § 6812; N.J.S.A. 32:1-147

The two said states agree that chapter two hundred fifty-one of the laws of New York of nineteen hundred thirty-four, entitled "An act establishing rules and regulations for the control of traffic on the interstate bridges and tunnels operated by the Port of New York Authority and prescribing proceedings and penalties for their violations", and chapter one hundred forty-six of the pamphlet laws of New Jersey, nineteen hundred thirty-two, entitled "An act establishing rules and regulations for the control of traffic on the inter-state bridges and tunnels operated by the Port of New York Authority and prescribing proceedings and penalties for their violations", shall be and are repealed as of the date this act takes effect.

Provisions of act as supplemental to powers of Port Authority

N.Y. Unconsol. L. § 6813; N.J.S.A. 32:1-154.13

This section and the preceding sections hereof, together with the corresponding sections of the act of the state of New Jersey concurring herein in accordance with section seventeen hereof, shall constitute an agreement between the states of New York and New Jersey supplementary to the compact between the two states dated April thirtieth, nineteen hundred twenty-one, and amendatory thereof, and shall be liberally construed to effectuate the purposes of said compact and of the agreements of the two states amendatory thereof or supplemental thereto; and shall be

construed to be in aid of and supplemental to and not in limitation of or in derogation of the powers heretofore conferred upon or delegated to the port authority.

Punishment of violations constituting felony or misdemeanor if committed on public road, etc. of municipality
N.Y. Unconsol. L. § 6814; N.J.S.A. 1-154.14

If the violation within the state of any of the rules and regulations set forth in section two through eight, inclusive, hereof, including but not limited to those regarding the payment of tolls, would have been a felony, misdemeanor or other punishable offense if committed on any public road, street, highway or turnpike in the municipality in which such violation occurred, it shall be tried and punished in the same manner as if it had been committed on such public road, street, highway or turnpike.

Punishment of violations resulting in personal injury or death, or property damage over \$5000
N.Y. Unconsol. L. § 6815; N.J.S.A. 32:1-154.15

Notwithstanding the provisions of section fourteen hereof, if the violation within the state of the rule and regulation set forth in section eight hereof shall result in injury or death to a person or persons or damage to property in excess of the value of five thousand dollars, such violation shall constitute a felony.

Punishment of violations constituting misdemeanor
N.Y. Unconsol. L. § 6816; N.J.S.A. 32:1-154.16

Except as provided in sections fourteen and fifteen hereof, any violation within the state of any of the rules and regulations set forth in sections two through eight,

inclusive, hereof, including but not limited to those regarding the payment of tolls, shall constitute a misdemeanor and shall be punishable as an offense triable in a magistrate's court by a fine not exceeding five hundred dollars or by imprisonment not exceeding sixty days or by both such fine and imprisonment.

Effective date
N.Y. Unconsol. L. § 6817; N.J.S.A. 32:1-154.17

This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with sections one through thirteen, inclusive, of this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately.

Traffic Regulations for Air and Marine Terminals

Rules and regulations applicable to air and marine terminal highways
N.Y. Unconsol. L. § 6831; N.J.S.A. 32:1-154.18

The port of New York authority (hereinafter called the "port authority") having duly adopted the following rules and regulations governing traffic on air terminal highways and marine terminal highways in the air terminals and marine terminals operated by it within the territorial limits of the state of New York, hereinafter set forth in this section, the penalties and procedures for their enforcement prescribed in sections two, three and four shall apply to violations thereof.

RULES AND REGULATIONS

1. The following terms as used herein shall have the indicated meanings:

"Air terminals" shall mean developments operated by the port authority consisting of runways, hangars, control

towers, ramps, wharves, bulkheads, buildings, structures, parking areas, improvements, facilities or other real property necessary, convenient or desirable for the landing, taking off, accommodation and servicing of aircraft of all types, including but not limited to airplanes, airships, dirigibles, helicopters, gliders, amphibians, sea-planes, or any other contrivance now or hereafter used for the navigation of or flight in air or space, operated by carriers engaged in the transportation of passengers or cargo, or for the loading, unloading, interchange or transfer of such passengers or their baggage, or such cargo, or otherwise for the accommodation, use or convenience of such passengers, or such carriers or their employees, or for the landing, taking off, accommodation and servicing of aircraft owned or operated by persons other than carriers.

"Air terminal highway" shall mean and include those portions of an air terminal designated and made available temporarily or permanently by the port authority to the public for general or limited highway use.

"Marine terminals" shall mean developments operated by the port authority consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers.

"Marine terminal highway" shall mean and include those portions of a marine terminal designated and made available temporarily or permanently by the port authority to the public for general or limited highway use.

"Traffic" shall mean and include pedestrians, animals and vehicles.

2. No vehicle shall be operated on any air terminal highway or marine terminal highway carelessly or negligently, or in disregard of the rights or safety of others, or without due caution and circumspection, or at a speed or in a manner so as to endanger unreasonably persons or property, or while the operator thereof is under the influence of intoxicating liquors or any narcotic or habit-forming drug, nor shall any vehicle be operated thereon if it is so constructed, equipped or loaded as to endanger unreasonably or to be likely to endanger unreasonably persons or property.

3. All persons on any air terminal highway or marine terminal highway must at all times comply with any lawful order, signal or direction by voice or hand of any member of the port authority police force. When traffic is controlled by traffic lights, signs or by mechanical or electrical signals, such lights, signs and signals shall be obeyed unless a port authority police officer directs otherwise.

4. Unless otherwise directed, all vehicles on any air terminal highway or marine terminal highway shall at all times stay to the right of the center of the roadway, except in the case of one-way roadways; slow-moving vehicles shall remain as close as possible to the right-hand edge or curb of the roadway; and where a roadway is marked with traffic lanes vehicles shall not cross markings.

5. No person shall operate a motor vehicle on an air terminal highway or marine terminal highway unless he is duly authorized to operate such vehicle on state and municipal highways in the state in which such air terminal highway or marine terminal highway is located, or unless he is especially authorized by the port authority to operate motor vehicles on such air terminal highway or marine terminal highway. No motor vehicle shall be permitted on

any air terminal highway or marine terminal highway unless it is registered in accordance with the provisions of the law of the state in which such air terminal highway or marine terminal highway is located, or unless it is especially authorized by the port authority to be operated on such air terminal highway or marine terminal highway.

6. The operator of any vehicle involved in an accident on an air terminal highway or marine terminal highway which results in injury or death to any person or damage to any property shall immediately stop such vehicle at the scene of the accident, render such assistance as may be needed, and give his name, address, and operator's license and registration number to the person injured or to any officer or witness of the injury. The operator of such vehicle shall make a report of such accident in accordance with the law of the state in which such accident occurred.

7. No person shall transport on any air terminal highway or marine terminal highway any dynamite, nitroglycerin, black powder, fireworks, blasting caps or other explosives, gasoline, alcohol, ether, liquid shellac, kerosene, turpentine, formaldehyde or other inflammable or combustible liquids, ammonium nitrate, sodium chlorate, wet hemp, powdered metallic magnesium, nitrocellulose film, peroxide or other readily inflammable solids or oxidizing materials, hydrochloric acid, sulfuric acid or other corrosive liquids, prussic acid, phosgene, arsenic, carbolic acid, potassium cyanide, tear gas, lewisite, or any other poisonous substances, liquids or gases, or any compressed gas, or any radioactive article, substance or material, at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property; nor shall any person park any vehicle, or permit the same to remain halted on any air terminal highway or marine terminal highway containing

any of the foregoing, at such time or place or in such manner or condition as to endanger unreasonably or as to be likely to endanger unreasonably persons or property.

8. No person shall park a vehicle or permit the same to remain halted on any air terminal highway or marine terminal highway except at such places and for such periods of time as may be prescribed or permitted by the port authority.

Trial and punishment of violations constituting felonies if committed on public street or highway

N.Y. Unconsol. L. § 6832; N.J.S.A. 32:1-154.19

If the violation within the state of any of the rules and regulations set forth in section one hereof, would have been a felony, misdemeanor or other punishable offense if committed on any public road, street, highway or turnpike in the municipality in which such violation occurred, it shall be tried and punished in the same manner as if it had been committed on such public road, street, highway or turnpike.

Violation of Regulation 7 as felony under certain circumstances
N.Y. Unconsol. L. § 6833; N.J.S.A. 32:1-154.20

Notwithstanding the provisions of section two hereof, if the violation within the state of the rule and regulation numbered seven and set forth in section one hereof shall result in injury or death to a person or persons or damage to property in excess of the value of five thousand dollars, such violation shall constitute a felony.

Violations as misdemeanors; trial and punishment
N.Y. Unconsol. L. § 6834; N.J.S.A. 32:1-154.21

Except as provided in sections two and three hereof, any violation within the state of any of the rules and regulations

set forth in section one hereof, shall constitute a misdemeanor and shall be punishable as an offense triable in a magistrate's court by a fine not exceeding five hundred dollars or by imprisonment not exceeding sixty days or by both such fine and imprisonment.

Exclusion of vehicles for violation of regulations
N.Y. Unconsol. L. § 6835; N.J.S.A. 32:1-154.22

The penalties above prescribed shall not preclude the port authority from excluding from any air terminal highway or marine terminal highway, permanently or for a specified time, all vehicles violating any of the rules and regulations set forth in section one hereof, as well as other vehicles owned or operated by the owner or operator of such vehicle.

State's power to enact laws respecting Port Authority unimpaired
N.Y. Unconsol. L. § 6836; N.J.S.A. 32:1-154.23

Nothing herein contained shall be construed to affect, diminish or impair the power of this state to enact any law, or to impair or diminish, or as recognition of the impairment or diminution of any power of this state, legislative or otherwise, with respect to the port authority, its properties, or persons or property thereon.

Effective date
N.Y. Unconsol. L. § 6837; N.J.S.A. 32:1-154.24

This act shall take effect upon the adoption by the states of New York and New Jersey of concurrent legislation providing that either state, without the consent or concurrence of the other state, may from time to time prescribe, amend,

modify or rescind penalties for violations within its territorial limits of any rule or regulation, otherwise authorized, of the port of New York authority, and procedures for the enforcement of such penalties, but in no event prior to July first, nineteen hundred fifty-one; provided, however, that if, prior to July first, nineteen hundred fifty-one, the states of New York and New Jersey have enacted such legislation, this act shall take effect July first, nineteen hundred fifty-one.

Smoking Regulations for Air and Marine Terminals

Areas where smoking or carrying lighted substances prohibited
N.Y. Unconsol. L. § 6851; N.J.S.A. 32:1-146.4

The port of New York authority (hereinafter called the "port authority") having duly adopted the following rule and regulation, hereinafter set forth in this section, in relation to smoking at, on, or in air terminals and marine terminals operated by it within the territorial limits of the state of New York, the penalties and procedures for its enforcement prescribed in section two shall apply to violations thereof.

1. No person shall smoke, carry, or possess a lighted cigarette, cigar, pipe, match or other lighted instrument capable of causing naked flame in or about any area, building or appurtenance of an air terminal, owned or operated by the port authority, or in or upon any area, bulkhead, dock, pier, wharf, warehouse, building, structure or shed of a marine terminal, owned or operated by the port authority, where smoking has been prohibited by the port authority and where appropriate signs to that effect have been posted, or on the open deck of any ship, lighter, carfloat, scow or other similar floating craft or equipment when berthed or moored at such dock, wharf, pier or to a vessel made fast thereto.

Penalty for violation of regulations

N.Y. Unconsol. L. § 6852; N.J.S.A. 32:1-146.5

Any violation of the rule and regulation set forth in section one hereof shall be punishable as an offense triable in a magistrate's court, for a first offense, by a fine of not more than fifty dollars or imprisonment for not more than thirty days or both; for a second offense, by a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment for not more than 60 days or both; for a third or any other subsequent offense, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than sixty days or both.

Rules and Regulations Governing Operation of Hudson Tubes

Prohibited conduct

N.Y. Unconsol. L. § 6861; N.J.S.A. 32:1-146.8

The port of New York authority (hereinafter called "port authority") having duly adopted the following rules and regulations, hereinafter set forth in this section in relation to conduct within the territorial limits of the state of New York and at, on or in the Hudson tubes and Hudson tubes extensions operated by its wholly-owned subsidiary the port authority trans-Hudson corporation (hereinafter called "PATH"), the penalties and procedures for their enforcement prescribed in section two shall apply to violations thereof.

RULES AND REGULATIONS

(1) No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match or any lighted instrument causing naked flame in or about any area, building or appurtenance or in any cars or other rolling stock of the Hudson tubes or Hudson tubes extensions where smoking has been prohibited by PATH and where appropriate signs to that effect have been posted.

(2) No person, unless duly authorized by PATH, shall in or upon any area, building, appurtenance, car or other rolling stock of the Hudson tubes or Hudson tubes extensions sell or offer for sale any article of merchandise or solicit any business or trade, including the carrying of bags for hire, the shining of shoes or bootblackening, or shall entertain any persons by singing, dancing or playing any musical instrument or solicit alms. No person, unless duly authorized by PATH, shall post, distribute or display commercial signs, circulars or other printed or written matter in or upon the Hudson tubes or Hudson tubes extensions.

(3) No person, who is unable to give satisfactory explanation of his presence, shall loiter about any car, or other rolling stock, area, building or appurtenance of the Hudson tubes or Hudson tubes extensions, or sleep therein or thereon.

(4) No person not authorized by PATH shall be permitted in or upon any car or other rolling stock or station or platform or parking facility within the Hudson tubes or Hudson tubes extensions, except upon payment in full of such fares, fees and other charges as may from time to time be prescribed by PATH. No person shall refuse to pay or evade or attempt to evade the payment in full of such fares, fees and other charges.

(5) No person shall spit upon, litter or create a nuisance or other insanitary condition in or on any car or other rolling stock, area, building or appurtenance of the Hudson tubes or Hudson tubes extensions.

(6) No person shall enter any car or other rolling stock, area, building or appurtenance of the Hudson tubes or Hudson tubes extensions with any animal, except an animal properly confined in an appropriate container or a guide dog properly harnessed and muzzled, accompanying a blind person carrying a certificate of identification issued by a guide dog school.

(7) No person shall get on any car or other rolling stock of the Hudson tubes or Hudson tubes extensions while it is in motion for the purpose of obtaining transportation thereon as a passenger nor shall any person wilfully obstruct, hinder or delay the passage of any such car or rolling stock. No person not authorized by PATH shall walk upon or along any right-of-way or related trackage of the Hudson tubes or Hudson tubes extensions.

Penalty for violation

N.Y. Unconsol. L. § 6862; N.J.S.A. 32:1-146.9

Any violation of the provisions of subdivision one of section one hereof, shall be an offense and shall be punishable for a first conviction thereof by a fine of not more than fifty dollars or imprisonment for not more than thirty days or both; for a second such conviction by a fine of not less than twenty-five dollars nor more than one hundred dollars or imprisonment for not more than sixty days or both; for a third or any other subsequent such conviction, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than sixty days or both. Any person who is guilty of violating any other

provision of section one hereof shall be guilty of an offense and shall be punishable by a fine not exceeding ten dollars or by imprisonment not exceeding thirty days or by both such fine and imprisonment for each conviction thereof.

Actions for injunction against the Authority

N.Y. Unconsol. L. § 7105; N.J.S.A. 32:1-161

The foregoing consent does not extend to suits, actions or proceedings for judgments, orders or decrees restraining, enjoining or preventing the port authority from committing or continuing to commit any act or acts, other than suits, actions or proceedings by the attorney general of New York or by the attorney general of New Jersey — each of whom is hereby authorized to bring such suits, actions or proceedings in his discretion on behalf of any person or persons whatsoever who requests him so to do except in the cases excluded by sections two, three and four of this act; provided, that in any such suit, action or proceeding, no judgment, order or decree shall be entered except upon at least two days' prior written notice to the port authority of the proposed entry thereof.